

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

No. CR 08-0730 WHA

v.

GUILLERMO HERRERA,

a/k/a "Shorty,"
a/k/a "Sparky,"

Defendant.

**ORDER RE REQUEST FOR
APPOINTMENT OF LEARNED
COUNSEL**

At the hearing on Tuesday, February 10, 2009, counsel for defendant Guillermo Herrera requested authorization for appointment of second counsel experienced in and knowledgeable about the defense of death penalty cases pursuant to 18 U.S.C. 3005. Defendant Herrera has been indicted with a capital-eligible crime. The government has yet to file a notice of intent to seek the death penalty but has invited defendant to provide input. The Court requested that both sides respond with their views regarding defendant's entitlement to appointment of second counsel at this stage of the litigation, and the parties submitted a joint response indicating that defendant is currently entitled to the appointment of learned counsel.


Section 3005 states "[w]hoever is *indicted* for treason or other capital crime *shall* be allowed to make his full defense by counsel; and the court before which the defendant is to be tried, or a judge thereof, *shall* promptly, upon the defendant's request, assign 2 such counsel, of whom at least 1 shall be learned in the law applicable to capital cases" The Administrative

1 Office's Guide to Judiciary Policies and Procedures states, "[a]s required by 18 U.S.C. § 3005,
2 *at the outset* of every capital case, courts should appoint two counsel, at least one of whom is
3 experienced in and knowledgeable about the defense of death penalty cases." The Guide §
4 6.01(A)(1).

5 Because defendant has been indicted for a capital crime, he is entitled to the
6 appointment of learned counsel. The Court hereby **APPROVES** defendant's request for the
7 appointment of second counsel experienced in and knowledgeable about the defense of death
8 penalty cases. Pursuant to Section 6.01(B)(1) of The Guide, defendant should consult with
9 Federal Public Defender Barry Portman regarding the selection of learned counsel and submit a
10 proposal for the appointment in accordance with the recommendation of the Federal Public
11 Defender's office.

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13 **IT IS SO ORDERED.**

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15 Dated: February 17, 2009.

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18 WILLIAM ALSUP
19 UNITED STATES DISTRICT JUDGE
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